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ABSTRACT

This paper briefly describes the history of the Golden Fleece Award given monthly by Senator William Proxmire for "the biggest waste of taxpayers' money" in the form of grants for research. It particularly focuses on the case brought by Dr. R. R. Hutchinson who was the recipient of the Golden Fleece Award for his research on the aggressive behavior of monkeys and human beings. It explores the history of Dr. Hutchinson's court case and discusses some of the implications of the case. A copy of the news release announcing the conferring of the award is appended. (TJ)

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SHEARING THE GOLDEN FLEECE: CHILLING THE DISCUSSION OF SCIENCE IN THE PUBLIC ARENA

A paper presented at

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This is a story about a man with a Golden Fleece and another man who was interested in finding out why monkeys clench their teeth. It begins in March, 1975 when Senator William Proxmire, a Democrat from Wisconsin, conferred his first Golden Fleece Award on the National Science Foundation for spending "$84,000 to find out why people fall in love."[1]

> No one -- not even the National Science Foundation -- can argue that falling in love is a science. Even if they spent $84 million or $84 billion they wouldn't get an answer that anyone would believe. I'm against it because I don't want an answer.[2]

There were complaints about the award and the Senator's lack of appreciation for science and research, but they came to little. The April award also went to the NSF, but this time the agency had to share it with the National Aeronautics and Space Administration, and the Office for Naval Research "after spending almost $500,000 in the last seven years to determine under what conditions rats, monkeys and humans bite and clench their jaws."[3]

Senator Proxmire went on in some detail (see Appendix) to describe the involvement in all this of Dr. Ronald R. Hutchinson, then of Kalamazoo State Hospital in Michigan. The Senator's Golden Fleece news release detailed some of the earlier results of Dr. Hutchinson's work funded by the government. This included aggression studies on monkeys, including their behavior when drugged or drunk. In several places, the news release mentioned the jaw clenching and grinding behavior of the monkeys.[4] The Senator concluded:

> Dr. Hutchinson's studies should make the taxpayers as well as his monkeys grind their teeth. In fact, the good doctor has made a fortune from his monkeys and in the process made a monkey out of the American taxpayer.
>
> It's time for the federal government to get out of this 'monkey business.' In view of the transparent worthlessness of Hutchinson's study of jaw-grinding and biting by angry or hard-drinking monkeys, it's time we put a stop to the bite Hutchinson and the bureaucrats who fund him have been taking out of the taxpayer.[5]

These were the first in a long line of Golden Fleece awards, covering a broad range of government research grants. They have been given to studies to determine the number of dogs, cats and horses in a section of Ventura, California, the time it takes to fry two eggs in a skillet, and the reasons why inmates want to escape from jail, to name just a few.[6] The themes are varied but focus on government waste, questionable expenditures of dollars which could be used in other ways, and the funding by government of projects which might better have been supported by the private sector of the economy.

The underlying meaning and significance of the Senator's awards and their contribution to a dialogue on scientific research and societal values may be deeper than the first bemused reaction to a particular award. That reaction varied considerably, depending on whether one was a citizen, scientist, bureaucrat or recipient. When Dr. Hutchinson received his award, he went to court, charging that the Senator and one of his aides, Morton Schwartz, had libeled him. His suit was unsuccessful at all rungs of the court ladder but one, the Supreme Court of the United States. A decision handed down by that court last June has paved the way for a trial of Hutchinson's case.[7] It is this case and its relationship to public understanding of science that we wish to discuss, because of its conflicting implications for protection of individual rights and free speech on contemporary issues in a democratic society.

Dr. Hutchinson's case was first heard in the U.S. District Court for the Western District of Wisconsin. He sought $8 million in damages, for slander, libel, malicious interference with contractual relations, grossly negligent disregard for the truth, invasion of privacy, and intentional infliction of emotional anguish. Hutchinson, who had received grants from several government agencies from 1967 to 1975, said the Senator's press release wasn't true, and omitted relevant facts. He claimed that agencies were pressured to stop giving him grants. He had been held up to ridicule among his professional peers, and his peace of mind had been disturbed.[8]

In defense, the Senator said he had absolute immunity because of the award's connection with legislative business, that his remarks were protected under First Amendment guarantees of free speech, that the remarks were essentially accurate, and that Dr. Hutchinson was a public figure and a public official because he was a recipient of public funds.[9]

The District Court found for the Senator, also adding that the libel defense of fair comment would protect the Senator's remarks about Dr. Hutchinson and his work.[10] The case was appealed to the U.S. Circuit Court of Appeals,[11] where the outcome was essentially the same, with one important exception. Justice Castle said that phone calls by the Senator or his staff to agencies urging cut-off of funds were not part of the protected legislative process, nor were any defamatory remarks made by the Senator on radio or television.[12] The court did agree with the lower court that Dr. Hutchinson was a public figure, and thus required him to show that any false, defamatory statements were made with "actual malice," that is, actual knowledge that the statements were false or reckless disregard of their truth or falsity.[13] The Senator, then, had won most of round two.

The Supreme Court was not persuaded by the Senator's arguments, and

found for Dr. Hutchinson. The case has been remanded to a lower court for trial. What were the findings of the Supreme Court? In a 7-2 decision, they said that the speech and debate clause of the U.S. Constitution does not protect transmission of Congressional newsletters and press releases, and that Dr. Hutchinson was not a public figure, which would have required him to prove malice on the part of the Senator. The defense of fair comment was not mentioned in the decision.[14]

The holding of the Court regarding Congressional immunity has considerable importance for members of the Congress, their staffs and the public, but we will leave discussion of this part of the decison to others. What is of vital -- and confusing -- concern to all concerned, is the narrow definition of public figure and the limitation on free speech which seems to follow from that narrowness.

The legal history of what has come to be known as the "Constitutional defense" in libel suits is relatively short and confusing. It came about in 1964, in the case of New York Times v. Sullivan.[15] The court said news media were not to be held liable for publishing defamatory words -- even those containing factual errors -- about public officials unless malice could be established, that is, that it was published with knowledge that it was false or with reckless disregard of whether it was false or not.[16] The Times decision sidestepped a precise definition of how broad the public official label might be. In later cases, a definition began to emerge, and it was eventually construed to include "public figures" or those who had thrust their "personality into the vortex of an important public controversy."[17] The definition hit a high water mark -- or nadir, depending on one's view -- in 1971, when a distributor of nudist magazines in Philadelphia who was arrested and falsely charged in a radio newscast with being in the "smut literature rackets" was deemed to be covered by the Times doctrine, because he

was involved in a "matter of public interest."[18] Said the court:

> We honor the commitment to robust debate on public issues which is embodied in the First Amendment, by extending Constitutional protection to all discussion and communciation involving matters of public or general concern, without regard to whether the persons involved are famous or infamous.[19]

The end of libel suits was predicted by some, but this was more than a little premature. The court soon began to retreat from that sweeping protection in such cases as Gertz v. Welch[20] and Time, Inc. v. Firestone[21] in the middle of the decade. At the same time, the definition of "actual malice" began to take legal shape, and plaintiffs who were public officials or public figures did recover damages in court.[22] Still, there is today no great certainty and clarity in the reported decisions to tell us who is and isn't a public figure. A supreme court justice in Arkansas, dissenting in a case in which a lawyer who had been suspended from practice for a year was not found to be a public figure, expressed confusion, noting that a belly dancer and a football coach had been found to be public figures in other cases.[23] Yet another judge has noted, "Defining public figures is much like trying to nail a jellyfish to the wall."[24]

It does strain the common sense and credulity of many to find that Dr. Hutchinson was not a public figure, or that, at the least, his grants might not be discussed under the general rubric of fair comment. He freely published his work, and he sought federal money. Nothing in Proxmire's attacks touched his personal life. Reaction in the media community to the case was predictable and best summed up in a comment from the Washington-based Reporters Committee for Freedom of the Press: "These decisions will encourage harassing libel suits and will discourage news about public events."[25]

An opposite and defensible view would be that the Senator had it coming to him. His Golden Fleece awards to many have appeared to be ill-conceived,

simplistic, anti-intellectual, political rhetoric. They appear designed to play on the heartstrings of citizens who know nothing about scientific method and suspect both eggheads and bureaucrats. If you were Dr. Hutchinson and found, as he claimed, that his grants had dropped off sharply after the award, you too might choose to go to court, as is his right.

Those who are fed up with the Senator and his awards may suggest that the Golden Fleece do nothing to stimulate public debate and discussion of the issues involved, and any shearing is overdue. But there is evidence that the Senator's efforts have not gone unchallenged, and that the anti-intellectual strain in his criticism of science is not necessarily the only thing at work. He has stimulated some public discussion of the issues.

Major newspapers, for instance, have not uncritically reprinted his periodic news releases announcing the awards. The Los Angeles Times used an editorial to pick at a fleece award of $38,000 to find out whether the runoff from cattle manure will pollute streams. The grant's purpose looked beyond that, with a finding, the Times said, that could well benefit farmers. "One would think," they said, "that Proxmire, who comes from a farm state, would know that caution is the rule when walking through a barnyard."[26] The vitriol of Nicholas von Hoffman's pen wondered whether the awards "have resulted in saner or more frugal government or whether the Senator gives a damn about saving the taxpayers money."[27] When the Washington Post reported the Golden Fleece award to the National Institute of Mental Health for a study on Peruvian brothels, it gave considerable space to comments from the sociologist involved, Dr. Pierre Van der Berghe of the University of Washington. He was one recipient who loved the publicity, if we are to believe the interview. He reported that "six colleagues already have come in spontaneously to congratulate me for the Golden Fleece." It may also be

noted that Dr. Van der Berghe is the author of a book titled Academic Gamesmanship, which includes a section on getting grants.[28] The New York Times interviewed Dr. Elaine Walster, one of the recipients of the first Golden Fleece award for research on love. Her defense of such a study was sympathetically presented, and she was quoted: "If ever there was an area that needed research, this is it." Finding out what is reasonable to expect from marriage will help us "to know there aren't blissful people out there who are so much happier than you are."[20]

Serious analyses of the Golden Fleece awards are scarce, but are not without kind words for Proxmire. Political scientist Michael Nelson thought he would wind up his research on the subject in a harshly critical mood. Not so. "After interviewing almost everyone involved in every facet of the June 1978 award, and reading all the documents, the answer I have come up with is the one I didn't want to give: Yes, Proxmire is really pretty fair." The awards, Nelson found, were well researched, not based in a deep anti-intellectualism (the Senator's staff abounds in advanced degree holders), and have a legitimate purpose in requiring government to defend and perhpas improve its fund granting function and mechanisms.[30] In the American Psychologist, Professor Leigh S. Shaffer avoided the too-easy dismissal of the Senator and his fleece as yet another manifestation of anti-intellectualism in American society. The trouble is deeper than that, he argued, and is rooted in disagreement between intellectuals and the public over the value of knowledge, and the public misunderstanding over the nature of knowledge, particularly in terms of the epistemology of the social sciences.[31] Public understanding of science, he concluded, is a continuing need in which scientists should play an active part. And, more concretely, a few more qualified social scientists on Congressional staffs might well serve to provide better liason with those involved in research.[32]

If public understanding and support of science are desireable goals, one wonders how they are promoted by law suits which have a chilling effect on free speech. Subtracting from and hedging in the First Amendment can hardly foster discussion and exchange in the media, be it a mass medium such as the New York Times or a scholarly journal which might have the temerity to comment critically on research or a pending grant. To trot out an adage, only time will tell whether this view is alarmist.

Meanwhile, we wait for the trial of the case on its merits as a private citizen who claims his reputation has been damaged. Whatever the outcome, it seems to us that much of the harm has been done in raising a caution flag in front of those who might like to have their say about the government and grantsmanship. Dr. Hutchinson has prosecuted his case out of his own pocket, to the tune of $50,000. With his success in the Supreme Court, he decided to accept donations. An organization called the Fund to Protect Scholars from Defamation has been formed, and is appealing for money to help pay the legal expenses in his case.[33]

The Senator, whose case has been supported by public funds because of its implication to his colleagues in the U.S. Senate, does not seem crestfallen, at least in his public statements. "The Golden Fleece will go on...I will strive to be just as emphatic, vivid and, if possible, humorous in my denunciation of waste as I can be." [34]

FOOTNOTES

1. Martin Tolchin, "The Perplexing Mr. Proxmire," New York Times Magazine, May 28, 1978, p. 9.
2. Ibid.
3. Hutchinson v. Proxmire, 431 F. Supp 1331, at 1333 (1975).
4. Ibid., pp. 1333-4.
5. Ibid., p. 1333.
6. Tolchin, pp. 9+.
7. Hutchinson v. Proxmire, 47 Law Week 4827 (1979).
8. Hutchinson v. Proxmire, 431 F. Supp 1311, at 1311-19 (1977).
9. Ibid., pp. 1319-20.
10. Ibid., pp. 1322-1333.
11. Hutchinson v. Proxmire, 579 F. 2nd 1027 (1978).
12. Ibid., p. 1034.
13. Ibid.
14. Hutchinson v. Proxmire, 47 Law Week 4827 (1979).
15. 376 U.S. 254, 84 S. Ct. 710 (1964)
16. Ibid., p. 279.
17. Curtis Publishing Co. v. Butts, 388 U.S. 130, 87 S. Ct. 1975 (1967).
18. Rosenbloom v. Metromedia, 403 U.S. 29 91 S. Ct. 1811 (1971).
19. Ibid., p. 1824.
20. 418 U.S. 323, 94 S. Ct. 2997 (1974).
21. 424 U.S. 448, 96 S. Ct. 958 (1976).
22. For a more complete discussion of the constitutional defense in libel cases, see Ch. 4, Harold L. Nelson and Dwight L. Teeter Jr., Law of Mass Communications, 3rd Ed. (New York: The Foundation Press, 1978).
23. 5 Med. L. Reptr. 1385, at 1390 (1979)

24. Rosanova v. Playboy Enterprises, Inc., 411 F. Supp. 440 at 443 (S.D. Ga., 1976).

25. "Private People," Time, July 9, 1979, p. 62.

26. "Watch Your Step, Senator," Los Angeles Times, Nov. 26, 1978, p. 4-VII.

27. Washington Post, Jan. 23, 1979, 4-B.

28. Ward Sinclair, "Oh, Those Quaint Andeans," Washington Post, April 19, 1978, p. 1-A+.

29. Leslie Bennetts, "A Scientist's Love Story: Research on Passion and Beyond," New York Times, July 28, 1978, p. 12-A.

30. "The Senator's Golden Egg," Washington Post Magazine, Sept. 24, 1978, pp. 20-26.

31. "The Golden Fleece: Anti-Intellectualism and Social Science," American Psychologist, 32 (1977), p. 814.

32. Ibid., p. 822.

33. John Walsh, "The Proxmire Decision a Caution to Congress," Science, 205 (July 13, 1979) pp. 170-1.

34. Morton Mintz, "Court Narrows Congress' Shield from Libel Suits," Washington Post, June 27, 1979, p. 1-A+.

Office of
SENATOR WILLIAM PROXMIRE
Wisconsin

FOR RELEASE AFTER 6:30 A.M. FRIDAY, APRIL 18, 1975

Senator William Proxmire (D.–Wis) announced on Friday, "My choice for the Golden Fleece Award for the biggest waste of taxpayers' money for the month of April goes jointly to the National Science Foundation, National Aeronautics and Space Administration and the Office of Naval Research for spending almost $500,000 in the last seven years to determine under what conditions rats, monkeys and humans bite and clench their jaws. From the findings of these studies it is clear that the Government paid a half million dollars to find out that anger, stopping smoking, and loud noises produce jaw clenching in people."

The Wisconsin Senator said, "This is the second in a series of "fleece of the month' awards which will climax in a Biggest Waste of the Year Award.

"All this money was given to Dr. Roland R. Hutchinson of Kalamazoo State Hospital in Michigan. Last year alone the good doctor spent over $200,000 of which more than $100,000 were federal funds. And what are some of the other results reached by these research projects in the last seven years?

"Dr. Hutchinson told NASA that people get angry when they feel cheated and tend to clench their jaws or even scream and kick. NSF learned that Dr. Hutchinson's monkeys became angry when they were shocked and would try to get away from the shock. In addition, NSF was informed that drunk monkeys do not usually react as quickly or as often as sober monkeys and that hungry monkeys get angry more quickly than well-fed monkeys.

"The Office of Naval Research appears to have gotten the same type of so-called research as did the NSF and NASA.

"It is very interesting to trace the history of these extremely similar and perhaps duplicative projects. In 1967, NSF gave Dr. Hutchinson $44,700 to study 'Environmental and Physiological Causes of Aggression.' For two years, Dr. Hutchinson studied the biting reactions of monkeys when they received electric shocks. He also compared their reaction while being given a number of different drugs as alcohol and caffeine. In 1969, the NSF gave Dr. Hutchinson another $26,000 to continue these experiments. He received another grant, this one for $51,200 in 1970 from the NSF.

"by this time Dr. Hutchinson was ready to extend his work to human biting and jaw clenching. In 1970, Dr. Hutchinson received a grant which ran for five years from the ONR to continue 'research on subhuman primates to determine the environmental, physiological and biochemical factors responsible for the maintenance of aggressive behavior and systematic replication of results obtained in primates extended to human subjects.' Total funding from the Navy ran to $207,000.

"During this period, Dr. Hutchinson applied for and received a $50,000 grant from NASA to develop measurements of latent anger or aggression in humans by means of jaw-clenching. In addition, Dr. Hutchinson received his fourth NSF grant in 1972 for $51,800 in order to continue his experiments on monkeys and extend the work to human jaw-clenching.

"Dr. Hutchinson, who in addition to being Research Director at Kalamazoo State Hospital, is also an Adjunct Professor at Western Michigan University and President of his own non-profit Foundation for Behavior Research, has proposals presently pending before the NSF, the National Institute of Drug Abuse, and the National Institute of Mental Health to continue research on monkeys' drinking, drug and jaw clenching habits. If Dr. Hutchinson is successful in this new grantsmanship attempt, he would receive an additional $150,000 of taxpayers' money.

"The funding of this nonsense makes me almost angry enough to scream and kick or even clench my jaw.

"Dr. Hutchinson's studies should make the taxpayers as well as his monkeys grind their teeth. In fact, the good doctor has made a fortune from his monkeys and in the process made a monkey out of the American taxpayer.

"It's time for the federal government to get out of this 'monkey business.' In view of the transparent worthlessness of Hutchinson's study of jaw-grinding and biting by angry or hard-drinking monkeys, it's time we put a stop to the bite Hutchinson and the bureaucrats who fund him have been taking out of the taxpayer."

Proxmire said that the public is urged to write him in Washington with suggestions for the "Golden Fleece of the Month" for May.